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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,912	08/20/2001	Nghi Van Nguyen	05725.0593-00	4343
7590 05/24/2004			EXAMINER	
Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P. 1300 I Street, N.W. Washington, DC 20005-3315			ELHILO, EISA B	
			ART UNIT	PAPER NUMBER
			1751	
DATE MAILED: 05/24/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/931,912	Applicant(s) NGUYEN ET AL. 	
	Examiner Eisa B Elhilo	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 21-131 is/are pending in the application.
- 4a) Of the above claim(s) 43-131 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 21-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1 This action is responsive to the amendment filed on February 27, 2004.

2 The cancellation of claim 20 is acknowledged. Pending claims are 1-19 and 21-42.

Claims 43-131 are withdrawn for the reasons set forth in the previous office action mailed on 7/22/2003.

3 The rejection of claims 1-4, 10, 18-19 and 38-41 under 35 U.S.C. 102(b) as being anticipated by Bore et al. (US 3,971,391), is withdrawn, because of the applicant's amendment in which the amended claims require at least one complexing agent to be presented in the composition.

4 The previous rejections of the claims under 35 U.S.C. 103(a) over the prior art of record, are withdrawn because of the applicant's amendment.

#### New ground of rejection

#### *Claim Rejections - 35 USC § 103*

5 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 10-11, 18-19, 23 and 38-42 are rejected under 35 U.S.C. 103(a) as being obvious over Bore et al (US 3,971,391).

Bore (US' 391) teaches an aqueous composition for lanthionizing hair comprising an alkaline metal of sodium hydroxide as claimed in claims 1-4 (see col. 4, lines 35-36), wherein the alkaline metal of sodium hydroxide is presented in the amount of 1.6% which falls within the

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claimed range as claimed in claim 5 or obvious over claims 6 and 42 (see col. 9, Example 5), a reducing agent of alkaline-metal sulfites as claimed in claims 1 and 10 (see col. 4, lines 52-54), wherein the reducing agent of alkaline-metal sulfites is presented in a concentration of up to  $3 \times 10^{-2}$  moles per liter which is overlapped with the claimed range as claimed in claim 11 (see col. 4, lines 52-55), complexing agent such as triethanolamine (see col. 11, Example 15), water as a solvent as claimed in claims 18-19 (see col. 9, Examples 2-6), cationic surfactants as claimed in claim 38 (see col. 5, lines 47-48), wherein the composition is a oil-in-water emulsion as claimed in claim 39 (see col. 5, lines 63-64). Bore also teaches a heat-activated composition as claimed in claim 41 (see col. 4, lines 24-26).

Although Bore et al. (US'391) teaches an aqueous composition for lanthionizing hair comprising at least one hydroxide compound, at least one reducing agent and at least one complexing agent, the reference does not require such a composition with sufficient specificity to constitute anticipation.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate such a composition with a reasonable expectation of success because such a composition comprising effective amounts of least one hydroxide compound, at least one reducing agent and at least one complexing agent falls within the scope of those taught by Bore et al. (US' 391), and, thus, a person of an ordinary skill in the art would have a motivation to formulate such a composition with a reasonable expectation of success for improving the performing of the composition and would expect such a composition to have similar properties to those claimed, absent unexpected results.

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6        Claims 7-9, 21-22, 24 and 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bore et al (US 3,971,391) in view of Mathews et al. (US 4,816,246).

Although Bore et al. (US'391) teaches an aqueous composition for lanthionizing hair comprising a reducing agent of alkaline-metal sulfite and a complexing agent of triethanolamine, the reference does not teach or disclose the specific species of alkaline metal sulfites or the other species of the complexing agents as claimed.

Mathews (US' 246) in analogous art of hair treating compositions, teaches a composition comprising ammonium thioglycolate compounds as claimed in claims 7-9 (see col. 2, lines 35-38) and a sequestering agent as complexing agent as claimed in claim 21 (see col. 4, line 22) and chelating agents such as ethylene-diamine tetraacetic acid (EDTA) as claimed in claim 24 and 34-37 (see col. 4, line 37) wherein the composition is formulated from water soluble components (see col. 7, lines 35-36) which implies that the dissociation is full as claimed in claim 22.

Therefore, in view of the teaching of the secondary reference one having ordinary skill in the art at the time the invention was made would be motivated to modify the primary reference of Bore by incorporating the reducing agent of ammonium thioglycolate compound and the sequestering agent as taught by Mathews to make such a composition. Such modification would be obvious because the primary reference of Bore clearly suggests the use of sulfur-containing compounds (see col. 4, lines 52-55) and complexing agent of triethanolamine in the composition and the secondary reference of Mathews teaches the use of ammonium thioglycolate compounds as the reducing agents and the sequestering agents (complexing agents) in the hair treating composition (see col. 4, lines 19-41), and, thus, a person of the ordinary skill in the art would be motivated to incorporate the ammonium thioglycolate and the sequestering compounds in the

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composition taught by Bore et al (US' 391) and would expect such a composition to have similar properties to those claimed, absent unexpected results.

7      Claims 12-17, 25-27 and 29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bore et al. (US 3,971,391) in view of Au et al. (US 5,872,111).

The disclosure of Bore (US' 391) is summarized above. The reference does not teach at least one cation exchange component (thickeners) and the complexing agents as claimed.

However, the primary reference of Bore teaches a composition comprising adjuvant that usually used in creams or gels (see col. 5, lines 67-68) and complexing agent of triethanolamine (see col. 11, Example 15).

Au (US' 111) in another analogous art teaches a shampoo composition comprising clay materials such as aluminum silicates as thickeners as claimed in claims 12-14 (see col. 15, lines 5-7), zeolites and aluminosilicates as claimed in claims 15-17 (see col. 20, line 37), tripotassium phosphates and sodium basic silicates (disodium silicates), citric acid as a poly-hydroxy-carboxylic acid and amino acids as claimed in claims 25-27 and 29-33 (see col. 10, line 64, col. 14, line 29, col. 25, lines 28 and lines 50-53).

Therefore, in view of teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of the primary reference by incorporating the thickener components and the complexing components as taught by Au with the reasonable expectation of success because the primary reference of Bore suggests the use of the complexing agents and adjuvants that usually used in creams and gels and Au (US' 111) clearly suggests the use of these ingredients in the shampoo compositions for rendering such compositions more formulatable, or aesthetically and/or cosmetically acceptable

(see col. 14, lines 14-18), and, thus, a person of the ordinary skill in the art would be motivated to incorporate these ingredients in the hair treating composition to make the composition more formulatable and acceptable and, would expect such a composition to have similar properties to those claimed, absent unexpected results.

8 Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bore et al. (US 3,971,391) in view of Au et al. (US 5,872,111) and further, in view of Plyes et al. (US 2001/0008630 A1).

The disclosures of Bore (US' 391) and Au (US' 111), are summarized above. The references do not teach sequestering agent of sodium glutamate as claimed.

However, the primary reference of Bore teaches a composition comprising adjuvants that usually used in creams or gels (see col. 5, lines 66-67) and Au teaches a composition comprising amino acids (see col. 10, line 64).

Pyles (US' 630) teaches in other analogous art a hair conditioning composition comprising sodium glutamate as claimed in claim 28 (see page 4, paragraph 0091).

Therefore, in view of teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of the primary reference by incorporating the sequestering agent of sodium glutamate with the reasonable expectation of success because the primary reference of Bore suggest the use of adjuvants that usually used in creams and gels and Pyles teaches the use of sodium glutamate in the composition, and, thus, a person of the ordinary skill in the art would be motivated to incorporate sodium glutamate in the hair treating composition as a sequestering agent and, would expect such a composition to have similar properties to those claimed, absent unexpected results.

*Conclusion*

9 Applicant's arguments with respect to claims 1-42 have been considered but are moot in view of the new ground(s) of rejection.

10 Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo  
May 20, 2004

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